

IRELL & MANELLA LLP
David Siegel (101355)
dsiegel@irell.com
A. Matthew Ashley (198235)
mashley@irell.com
Allison L. Libeu (244487)
alibeu@irell.com
Holly Gershow (253508)
hgershow@irell.com
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4276
Telephone: (310) 277-1010
Facsimile: (310) 203-7199

Attorneys for Defendant
Angelo Mozilo

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE: COUNTRYWIDE FINANCIAL
CORP. MORTGAGE-BACKED
SECURITIES LITIGATION

MDL No. 11-ML-02265-MRP (MANx)

**DEFENDANT ANGELO MOZILO'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
CONSOLIDATED MOTION TO
DISMISS PLAINTIFFS'
COMPLAINTS**

Hr'g: February 13, 2012 at 11:00 a.m.
February 14, 2012 at 1:00 p.m.
Judge: Hon. Mariana R. Pfaelzer
Ctrm: 12

AMERICAN FIDELITY ASSURANCE
COMPANY,

Plaintiff,

vs.

COUNTRYWIDE FINANCIAL
CORPORATION, *et al.*,

Defendants.

Case No. 11-CV-07167-MRP (MANx)

1 NATIONAL INTEGRITY LIFE
2 INSURANCE COMPANY,

3 Plaintiff,

4 vs.

5 COUNTRYWIDE FINANCIAL
6 CORPORATION, *et al.*,

7 Defendants.

Case No. 11-CV-09889-MRP (MANx)

8 PUTNAM BANK, individually and on
9 behalf of all others similarly situated,

10 Plaintiff,

11 vs.

12 COUNTRYWIDE FINANCIAL
13 CORPORATION, *et al.*,

14 Defendants.

Case No. 11-CV-04698-MRP (MANx)

15 SEALINK FUNDING LIMITED,

16 Plaintiff,

17 vs.

18 COUNTRYWIDE FINANCIAL
19 CORPORATION, *et al.*,

20 Defendants.

Case No. 11-CV-08896-MRP (MANx)

21 THE WESTERN AND SOUTHERN
22 LIFE INSURANCE COMPANY, *et al.*,

23 Plaintiffs,

24 vs.

25 COUNTRYWIDE FINANCIAL
26 CORPORATION, *et al.*,

27 Defendants.

Case No. 11-CV-07166-MRP (MANx)

28

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. BACKGROUND AND ALLEGATIONS AS TO MR. MOZILO.....	3
III. ALL OF PLAINTIFFS' FEDERAL SECURITIES CLAIMS ARE TIME-BARRED AS TO MR. MOZILO	4
A. Prior Complaints, Including the Nearly Identical MBS Class Action, Triggered Discovery as a Matter of Law	5
B. The SEC Complaint Cannot Revive Plaintiffs' Time-Barred Claims.....	8
C. An Allegedly New MBS Valuation Model Cannot Revive Plaintiffs' Time-Barred Claims	9
IV. ALL OF PLAINTIFFS' STATE SECURITIES CLAIMS ARE TIME-BARRED AS TO MR. MOZILO	10
V. PLAINTIFFS' CIVIL CONSPIRACY CLAIMS ARE TIME-BARRED AS TO MR. MOZILO	11
VI. AMERICAN FIDELITY'S AIDING AND ABETTING FRAUD CLAIM IS TIME-BARRED AS TO MR. MOZILO.....	13
VII. SEALINK'S NEGLIGENT MISREPRESENTATION CLAIM IS TIME-BARRED AS TO MR. MOZILO.....	14
VIII. THE STATE LAW CLAIMS AGAINST MR. MOZILO IN <i>AMERICAN FIDELITY</i> AND <i>WESTERN & SOUTHERN</i> FAIL FOR LACK OF PERSONAL JURISDICTION	14
A. Plaintiffs Bear the Burden of Establishing Personal Jurisdiction	15
B. The Long-Arm Statutes Do Not Authorize Jurisdiction.....	16
C. Constitutional Due Process Does Not Authorize Jurisdiction	18
1. Mr. Mozilo's Contacts Must Be Analyzed Separately from Countrywide Financial Corporation's Contacts	19
2. Mr. Mozilo Is Not Subject to General Jurisdiction	19
3. Mr. Mozilo Is Not Subject to Specific Jurisdiction.....	20
IX. CONCLUSION	25

TABLE OF AUTHORITIES

Page(s)

Cases

Allstate Insurance Company v. Countrywide Financial Corporation,
--- F. Supp. 2d ----, No. 11-cv-05236-MRP (MANx), 2011 WL
5067128 (C.D. Cal. Oct. 21, 2011) passim

Alsop v. Carolina Custom Products, Inc.,
No. EDCV 07-212-VAP, 2007 WL 2441025 (C.D. Cal. Jun. 29,
2007)..... 21

Amba Mktg. Sys., Inc. v. Jobar Int'l, Inc.,
551 F.2d 784 (9th Cir. 1977)..... 16

Ambassador v. Euclid,
No. 80 Civ. 1235 (CBM), 1984 WL 341 (S.D.N.Y. May 24,
1984)..... 14

American Fidelity Assurance Co. v. Countrywide Financial Corp.,
No. 11-cv-07167 MRP (MANx) (C.D. Cal. Apr. 11, 2011)..... passim

American Pipe & Construction Co. v. Utah,
414 U.S. 528 (1974) 7

Argent Classic Conv. Arbitrage Fund L.P. v. Countrywide Fin. Corp.,
No. 07-CV-07097-MRP (MANx) (C.D. Cal. Oct. 30, 2007) 6

Ark. Teacher Ret. Sys., Fire & Police Pension Ass'n of Colo. v. Mozilo,
No. 07-cv-06923-MRP (MANx) (C.D. Cal. Oct. 24, 2007)..... 6

Arneil v. Ramsey,
550 F.2d 774 (2d Cir. 1977)..... 7

Auto Channel, Inc. v. Speedvision Network, LLC,
995 F. Supp. 761 (W.D. Ky. 1997) 15

Brown v. Gen. Steel Domestic Sales, LLC,
No. 08-cv-00779 MMM (SHX), 2008 WL 2128057 (C.D. Cal.
May 19, 2008) 19

Costaras v. NBC Universal, Inc.,
409 F. Supp. 2d 897 (N.D. Ohio 2005)..... 17

Country World v. Imperial Frozen Foods,
589 N.Y.S.2d 81 (N.Y. App. Div. 1992) 14

Crown, Cork & Seal Co. v. Parker,
462 U.S. 345 (1983) 7

D'Addario v. Geller,
264 F. Supp. 2d 367 (E.D. Va. 2003)..... 15

	<u>Page(s)</u>
1	
2	
3	<i>Data Disc, Inc. v. Sys. Tech. Assoc., Inc.</i> ,
4	557 F.2d 1280 (9th Cir. 1977)..... 16, 21
5	<i>Eastwood v. Nat'l Bank of Commerce</i> ,
6	673 F. Supp. 1068 (W.D. Okla. 1987) 13
7	<i>Footbridge Ltd. Trust v. Countywide Fin. Corp.</i> ,
8	770 F. Supp. 2d 618 (S.D.N.Y. 2011)..... 7
9	<i>Ford Motor Credit Co. v. Jones</i> ,
10	No. 92428, 2009 WL 1912626 (Ohio Ct. App. July 2, 2009) 12
11	<i>Franklin Prod., Inc. v. Gen. Nutrition Corp.</i> ,
12	No. 2:05-cv-1061, 2007 WL 2462665 (S.D. Ohio Aug. 27, 2007) 18
13	<i>Gallaher v. Salem</i> ,
14	No. CIV-07-974-F, 2009 WL 2591669 (W.D. Okla. Aug. 20,
15	2009)..... 14
16	<i>Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.</i> ,
17	284 F.3d 1114 (9th Cir. 2002)..... 24
18	<i>Gordon & Co. v. Ross</i> ,
19	63 F. Supp. 2d 405 (S.D.N.Y. 1999)..... 12
20	<i>Hardin v. Reliance Trust Co.</i> ,
21	No. 1:04 CV 02079, 2006 WL 2850455 (N.D. Ohio Sept. 29,
22	2006)..... 12
23	<i>Harman v. Bench Sec. Corp.</i> ,
24	No. CV 950534266S, 1998 WL 46691 (Conn. Super. Ct. Jan. 22,
25	1998)..... 11
26	<i>Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.</i> ,
27	328 F.3d 1122 (9th Cir. 2003)..... 15
28	<i>Helicopteros Nacionales de Colombia, S.A. v. Hall</i> ,
	466 U.S. 408 (1984) 18, 19
	<i>Hnath v. Hereford</i> ,
	757 F. Supp. 2d 1130 (N.D. Okla. 2010)..... 18
	<i>Hoover Co. v. Robeson Indus. Corp.</i> ,
	904 F. Supp. 671 (N.D. Ohio 1995)..... 17
	<i>In re Countrywide Fin. Corp. Deriv. Litig.</i> ,
	No. 07-CV-06923-MRP (MANx) (C.D. Cal. Feb. 15, 2008)..... 6
	<i>In re Countrywide Fin. Corp. Derivative Litig.</i> ,
	554 F. Supp. 2d 1044 (C.D. Cal. 2008)..... 8

	<u>Page(s)</u>
1	
2	
3	<i>In re Countrywide Fin. Corp. Sec. Litig.</i> ,
4	588 F. Supp. 2d 1132 (C.D. Cal. 2008)..... 6, 8
5	<i>In re Dynamic Random Access Memory (DRAM) Antitrust Litig.</i> ,
6	2005 WL 2988715 (N.D. Cal. Nov. 7, 2005)..... 15, 18, 24
7	<i>In re Nucorp Energy Sec. Litig.</i> ,
8	772 F.2d 1486 (9th Cir. 1985)..... 11, 12, 13, 14
9	<i>In re Wells Fargo Mortgage-Backed Certificates Litig.</i> ,
10	No. 09-CV-01376-LHK, 2010 WL 4117477, at *6-7 (N.D. Cal. Oct. 19, 2010)..... 5
11	<i>Ind. Plumbing Supply, Inc. v. Sd. of Lynn, Inc.</i> ,
12	880 F. Supp. 743 (C.D. Cal. 1995)..... 21
13	<i>Int'l Shoe Co. v. Washington</i> ,
14	326 U.S. 310 (1945)..... 17, 18, 24
15	<i>Irizarry v. East Longitude Trading Co., Ltd.</i> ,
16	296 F. Supp. 2d 862 (N.D. Ohio 2003)..... 17
17	<i>Keeton v. Hustler Magazine, Inc.</i> ,
18	465 U.S. 770 (1984)..... 19, 21
19	<i>Keith v. Lighthouse Sec., Ltd.</i> ,
20	No. 3:92 CV 0185(GLG), 1997 WL 380430 (D. Conn. June 17, 1997)..... 10
21	<i>Kennedy v. Freeman</i> ,
22	919 F.2d 126 (10th Cir. 1990)..... 16
23	<i>Kondrat v. Morris</i> ,
24	118 Ohio App. 3d 198 (Ohio Ct. App. 1997) 11
25	<i>Loyd v. Huntington Bank</i> ,
26	No. 1:08 CV 2301, 2009 WL 1767586 (N.D. Ohio June 18, 2009)..... 11, 12
27	<i>Luther v. Countrywide Home Loans Servicing LP</i> ,
28	No. BC380698 (Cal. Super. Ct. Nov. 14, 2007) 4, 7
	<i>Malone v. Nuber</i> ,
	No. C07-2046RSL, 2009 WL 481285 (W.D. Wash. Feb. 23, 2009)..... 15
	<i>Maricopa County v. Am. Petrofina, Inc.</i> ,
	322 F. Supp. 467, 469 (N.D. Cal. 1971) 15
	<i>McMahan & Co. v. Donaldson, Lufkin & Jenrette Sec. Corp.</i> ,
	727 F. Supp. 833 (S.D.N.Y. 1989)..... 12

	<u>Page(s)</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

Me. State Ret. Sys. v. Countrywide Fin. Corp.,
722 F. Supp. 2d 1157 (C.D. Cal. 2010)..... 5

Me. State Ret. Sys. v. Countrywide Fin. Corp.,
No. 10-cv-00302-MRP (MANx) (C.D. Cal. Jan. 14, 2010) 4

Merck & Co. v. Reynolds,
130 S. Ct. 1784 (2010) 5

MFS Series Trust III ex rel. MFS Mun. High Income Fund v. Grainger,
96 P.3d 927 (Utah 2004) 17

Morley v. Cohen,
610 F. Supp. 798 (D. Md. 1985) 15

National Integrity Life Insurance Co. v. Countrywide Financial Corp.,
No. 11-cv-09889 MRP (MANx) (C.D. Cal. Nov. 9, 2011) passim

New Mexico State Inv. Council v. Countrywide Fin. Corp.,
No. D-0101-CV-2008-02289 (N.M. Dist. Ct. Apr. 14, 2009) 23

New York City Employees' Ret. Sys. v. Countrywide Fin. Corp.,
No. 08-cv-00492-ODW (C.D. Cal. Jan. 25, 2008) 6

Office of the Att'y Gen. v. Mozilo,
No. 08-30105 (19) (Fl. Cir. Ct. June 6, 2011)..... 22

Pebble Beach Co. v. Caddy,
453 F.3d 1151 (9th Cir. 2006)..... 21

People v. Countrywide Fin. Corp.,
No. 08CH22994 (Ill. Cir. Ct. Jun. 24, 2010)..... 23

Premium Plus Partners, L.P. v. Goldman, Sachs & Co.,
648 F.3d 533 (7th Cir. 2011)..... 8

Putnam Bank v. Countrywide Financial Corp.,
No. 11-cv-04698 MRP (MANx) (C.D. Cal. Jan. 27, 2011)..... 1, 3, 4, 10

Schwarzenegger v. Fred Martin Motor Co.,
374 F.3d 797 (9th Cir. 2004)..... 20, 21

Sealink Funding Ltd. v. Countrywide Financial Corp.,
No. 11-cv-08898 MRP (MANx) (C.D. Cal. Sept. 29, 2011)..... 1, 3, 14, 25

SEC v. Ross,
504 F.3d 1130 (9th Cir. 2007)..... 18

Stichting Pensioenfonds ABP v. Countrywide Financial Corporation,
--- F. Supp. 2d ---, No. 10-cv-07275-MRP (MANx), 2011 WL
3558173 (C.D. Cal. Aug. 9, 2011) passim

	<u>Page(s)</u>
1	
2	
3	<i>Toyz, Inc. v. Wireless Toyz, Inc.</i> ,
4	No. C 09-05091 JF (HRL), 2010 WL 334475 (N.D. Cal. Jan. 25, 2010)..... 22
5	<i>Transp. Alliance Bank, Inc. v. Arrow Trucking Co.</i> ,
6	No. 10-CV-16-GKF-PJC, 2011 WL 221863 (N.D. Okla. Jan. 21, 2011)..... 13
7	<i>United Financial Casualty Co. v. Countrywide Financial Corporation</i> ,
8	No. 11-cv-04766-MRP (MANx), slip op. (C.D. Cal. Nov. 16, 2011)..... 1, 2, 6, 10
9	<i>Vaccariello v. Smith & Nephew Richards, Inc.</i> ,
10	763 N.E.2d 160 (Ohio 2002)..... 11
11	<i>Walker v. Walker</i> ,
12	310 P.2d 760 (Okla. 1957) 14
13	<i>Wash. State Plumbing & Pipe. Pension Tr. v. Countrywide Fin. Corp.</i> ,
14	No. BC392571 (Cal. Super. Ct. June 12, 2008)..... 4
15	<i>Western & Southern Life Ins. Co. v. Countrywide Financial Corp.</i> ,
16	No. 11-cv-07166 MRP (MANx) (C.D. Cal. April 27, 2011)..... passim
17	<i>Wyser-Pratte Mgmt. Co. v. Telxon Corp.</i> ,
18	413 F.3d 553 (6th Cir. 2005)..... 11
19	<u>Statutes</u>
20	15 U.S.C. § 77m 5
21	28 U.S.C. § 1658(b)(1) 5
22	28 U.S.C. § 1658(b)(2) 5
23	28 U.S.C. Section 1407 11
24	Conn. Gen. Stat. § 36b-29(f) 10
25	N.Y. C.P.L.R. 202 12
26	N.Y. C.P.L.R. 214(4)..... 14
27	Ohio Rev. Code § 1707.43(B)..... 10
28	Ohio Rev. Code § 2307.382 17
	Ohio Rev. Code § 2923.34(K)..... 17
	Okla. Stat. tit. 12, § 95(A)(3)..... 13

1 **I. INTRODUCTION**¹

2 These five cases, brought by sophisticated institutional purchasers of
3 Countrywide mortgage-backed securities (“MBS”), are nearly identical to three
4 others that this Court dismissed as to Defendant Angelo Mozilo: *Stichting*
5 *Pensioenfond ABP v. Countrywide Financial Corporation*, --- F. Supp. 2d ----,
6 No. 10-cv-07275-MRP (MANx), 2011 WL 3558173 (C.D. Cal. Aug. 9, 2011);
7 *Allstate Insurance Company v. Countrywide Financial Corporation*, --- F. Supp. 2d
8 ----, No. 11-cv-05236-MRP (MANx), 2011 WL 5067128 (C.D. Cal. Oct. 21, 2011);
9 and *United Financial Casualty Co. v. Countrywide Financial Corporation*,
10 No. 11-cv-04766-MRP (MANx), slip op. (C.D. Cal. Nov. 16, 2011)
11 (“*Progressive*”), Def. Mozilo’s Request for Judicial Notice (“RJN”) ¶ 1, Ex. 1. In
12 *Stichting*, *Allstate*, and *Progressive*, the Court found that claims against Mr. Mozilo
13 were time-barred, and there is no reason for a different result here.

14 The limitations period for the federal and the state law securities claims
15 against Mr. Mozilo is one or two years from the date of discovery. The civil
16 conspiracy claims against Mr. Mozilo are also subject to a two-year limitations
17 period, which runs from discovery, as is the aiding and abetting fraud claim in
18 *American Fidelity*. Faced with these same and similar statutes of limitations, this
19 Court found that the allegations against Mr. Mozilo in *Stichting*, *Allstate*, and
20 *Progressive* – the same allegations as advanced in this case – were time-barred as a

21 ¹ Mr. Mozilo brings this consolidated motion to dismiss: (1) the Amended
22 Complaint in *American Fidelity Assurance Co. v. Countrywide Financial Corp.*,
23 No. 11-cv-07167 MRP (MANx) (C.D. Cal. Apr. 11, 2011); (2) the Complaint in
24 *National Integrity Life Insurance Co. v. Countrywide Financial Corp.*,
25 No. 11-cv-09889 MRP (MANx) (C.D. Cal. Nov. 9, 2011); (3) the Complaint in
26 *Putnam Bank v. Countrywide Financial Corp.*, No. 11-cv-04698 MRP (MANx)
27 (C.D. Cal. Jan. 27, 2011); (4) the Complaint in *Sealink Funding Ltd. v. Countrywide*
28 *Financial Corp.*, No. 11-cv-08898 MRP (MANx) (C.D. Cal. Sept. 29, 2011); and
(5) the Amended Complaint in *The Western and Southern Life Insurance Co. v.*
Countrywide Financial Corp., No. 11-cv-07166 MRP (MANx) (C.D. Cal. April 27,
2011) (collectively, the plaintiffs and operative complaints in the aforementioned
cases are referred to herein as the “Plaintiffs” and the “Complaints,” respectively).
Mr. Mozilo also joins in and incorporates by reference, to the extent applicable to
the claims against him, the other defendants’ motions to dismiss.

1 matter of law. *Stichting*, 2011 WL 3558173, at *13; *Allstate*, 2011 WL 5067128, at
2 *13; *Progressive*, slip op. at 3. In fact, the Complaints here are even more stale; all
3 of them were filed *after* the complaints in *Allstate*, and all but one were filed after
4 the First Amended Complaint (“FAC”) in *Stichting*.

5 The lone negligent misrepresentation claim against Mr. Mozilo in *Sealink* is
6 subject to a three-year limitations period, which runs from the date of the alleged
7 misstatement on which the plaintiff relied. Because all of Sealink’s MBS purchases
8 were made more than three years before the complaint was filed, the negligent
9 misrepresentation claim against Mr. Mozilo is time-barred as a matter of law.

10 As in *Stichting*, *Allstate*, and *Progressive*, the Complaints demonstrate on
11 their face that Plaintiffs discovered, or reasonably could have discovered, their
12 alleged claims against Mr. Mozilo years ago. The alleged misconduct is the same
13 conduct alleged in a nearly-identical MBS class action filed more than three years
14 before the Complaints at issue here. Mr. Mozilo was not named in that class action
15 and that fact alone precludes any argument that Plaintiffs’ claims could relate back
16 as to him to the earlier-filed class case. Moreover, the Complaints repeatedly crib
17 from prior shareholder, regulatory, and other complaints against Countrywide and
18 Mr. Mozilo, each of which also was filed long ago, further establishing that these
19 cases are time-barred as to Mr. Mozilo. *See, e.g., Am. Fidelity Am. Compl.* ¶ 213
20 (citing Countrywide shareholder class action as supposed proof of alleged
21 abandonment of underwriting guidelines); *Sealink Compl.* ¶ 93 (same).

22 In addition, the state law claims against Mr. Mozilo in *American Fidelity* and
23 *Western & Southern* fail for lack of personal jurisdiction. *American Fidelity* and
24 *Western & Southern* were originally brought in Oklahoma and Ohio, then
25 transferred to this Court as part of the Countywide MBS multi-district litigation
26 (“MDL”). When a case is transferred to an MDL, personal jurisdiction is analyzed
27 from the perspective of the transferor court, meaning that if Oklahoma and Ohio
28 lack personal jurisdiction over Mr. Mozilo, the cases must be dismissed. Moreover,

1 because the federal claims are untimely as a matter of law, the nationwide service of
2 process provisions in the federal securities acts cannot be used as the basis for
3 personal jurisdiction over Mr. Mozilo. Plaintiffs must proffer an independent
4 jurisdictional basis for any remaining state law claims. Because Mr. Mozilo had no
5 contact with Oklahoma or Ohio, Plaintiffs cannot make this showing.

6 **II. BACKGROUND AND ALLEGATIONS AS TO MR. MOZILO**

7 *The Claims against Mr. Mozilo.* Mr. Mozilo faces the following claims:

8 (1) Section 15 under the Securities Act of 1933 (the "Securities Act") – in *American*
9 *Fidelity*; (2) Section 20(a) under the Securities Exchange Act of 1934 (the
10 "Exchange Act") – in *National Integrity*, *Putnam*, and *Western & Southern*;
11 (3) Connecticut Uniform Securities Act – in *Putnam*; (4) Ohio Securities Act – in
12 *National Integrity* and *Western & Southern*; (5) Ohio Corrupt Activities Act – in
13 *National Integrity* and *Western & Southern*; (6) Aiding and Abetting Fraud – in
14 *American Fidelity* and *Sealink*; (7) Negligent Misrepresentation – in *Sealink*; and
15 (8) Civil Conspiracy – in *National Integrity* and *Western & Southern*.

16 For the convenience of the Court, attached hereto as Appendix A is a chart of
17 the claims against Mr. Mozilo, the limitations period, and a citation to the governing
18 statute/case law providing that limitation period.

19 *The Securitizations.* All the claims here rest upon alleged misstatements in
20 MBS offering documents. See, e.g., *Am. Fidelity* Am. Compl. ¶¶ 1, 4, 41-42, 72-93,
21 253-56, 403, 460-62, 464-65; *National Integrity* Compl. ¶¶ 1, 76-80, 84, 205-07,
22 241-44, 257-58, 260-62, 283-86, 400, 405, 409, 452; *Putnam* Compl. ¶¶ 1-2, 5,
23 10-11, 36, 44, 53, 55-82, 97-100, 172-73; *Sealink* Compl. ¶¶ 1-2, 52-64, 82, 95-96,
24 98-118, 129, 139, 150, 161-64, 166; *Western & Southern* Am. Compl. ¶¶ 1, 76-80,
25 84, 205-07, 241-44, 257-58, 260-62, 283-86, 400, 405, 409, 452. The MBS
26 securitizations at issue are alleged to have taken place between 2005 and March 25,
27 2008. See *Am. Fidelity* Am. Compl. ¶ 5; *National Integrity* Compl. ¶ 75; *Putnam*
28 Compl. ¶¶ 2, 11; *Sealink* Compl. ¶ 2; *Western & Southern* Am. Compl. ¶ 75.

1 ***The Class Action.*** On November 14, 2007, a class action attacking hundreds
2 of Countrywide MBS securitizations was filed in California state court. *Luther v.*
3 *Countrywide Home Loans Servicing LP*, No. BC380698 (Cal. Super. Ct. Nov. 14,
4 2007). On June 12, 2008, another class action added more securitizations. *Wash.*
5 *State Plumbing & Pipefitting Pension Trust v. Countrywide Fin. Corp.*,
6 No. BC392571 (Cal. Super. Ct. June 12, 2008). These actions were consolidated in
7 2008 and ultimately re-filed in January 2010 before this Court. *Me. State Ret.*
8 *Sys. v. Countrywide Fin. Corp.*, No. 10-cv-00302-MRP (MANx) (C.D. Cal. Jan. 14,
9 2010). Nearly every MBS deal at issue here was also at issue in the class action.
10 *Compare Am. Fidelity Am. Compl.* ¶ 32, *National Integrity Compl.* ¶¶ 75, 394,
11 *Ex. A, Putnam Compl.* ¶ 15, *Sealink Compl.* ¶ 33, and *Western & Southern Am.*
12 *Compl.* ¶¶ 75, 394, *Ex. A with Me. State Compl.* ¶ 47, *RJN* ¶ 2, *Ex. 2* at 22-52.

13 ***However, Mr. Mozilo was never a party to the class action.*** See *Putnam*
14 *Compl.* ¶ 117 (“Except for the Bank of America Defendants, Mozilo, and
15 Countrywide Capital Markets, each Defendant in this Complaint was also a
16 defendant in the *Luther* or *Washington State Plumbing* class actions.”). He appeared
17 as a defendant for the first time when Plaintiffs filed their respective Complaints in
18 these actions, the earliest on January 27, 2011 and latest on November 9, 2011. This
19 Court will recall that the complaint in *Allstate* and the amended complaint in
20 *Stichting* were filed on December 27, 2010 and February 14, 2011, respectively –
21 making the Complaints here even more stale.

22 **III. ALL OF PLAINTIFFS’ FEDERAL SECURITIES CLAIMS ARE**
23 **TIME-BARRED AS TO MR. MOZILO**

24 Mr. Mozilo faces control person claims under Section 15 of the Securities Act
25 in *American Fidelity* and Section 20(a) of the Exchange Act in *National Integrity*,
26 *Putnam*, and *Western & Southern*.² Claims under the Securities Act must be

27 ² Although Mr. Mozilo faced a Section 20(a) claim in *American Fidelity*’s
28 original complaint, the Section 20(a) claim against him has been dropped from the
amended complaint. *Am. Fidelity Am. Compl.* ¶ 402.

1 brought within “one year after the discovery of the untrue statement or the
2 omission.” 15 U.S.C. § 77m. Claims under the Exchange Act must be brought
3 within two years “after the discovery of the facts constituting the violation.” 28
4 U.S.C. § 1658(b)(1).

5 The limitations period under the Securities Act runs from discovery of the
6 alleged misstatement “or after such discovery should have been made by the
7 exercise of reasonable diligence.” 15 U.S.C. § 77m. Similarly, under the Exchange
8 Act, “discovery . . . encompasses not only those facts the plaintiff actually knew, but
9 also those facts a reasonably diligent plaintiff would have known.” *Merck & Co. v.*
10 *Reynolds*, 130 S. Ct. 1784, 1796 (2010) (internal quotations omitted); *Stichting*,
11 2011 WL 3558173, at *6; *Allstate*, 2011 WL 5067128, at *11. Thus, the limitations
12 period begins to run when the plaintiff discovers or reasonably could have
13 discovered the facts constituting the violation – whichever comes first. *Merck*, 130
14 S. Ct. at 1794-95; *Stichting*, 2011 WL 3558173, at *6; *Allstate*, 2011 WL 5067128,
15 at *11. Under this standard, the statute begins to run (at the latest) when the facts
16 constituting the violation are publicly disclosed, including through other lawsuits.
17 *In re Wells Fargo Mortgage-Backed Certificates Litig.*, No. 09-CV-01376-LHK,
18 2010 WL 4117477, at *6-7 (N.D. Cal. Oct. 19, 2010) (dismissing lawsuit as stale
19 because its claims overlapped with a prior lawsuit concerning the same MBS
20 offerings with the same registration statements and prospectuses); *Stichting*, 2011
21 WL 3558173, at *8, 10-11; *Allstate*, 2011 WL 5067128, at *11; *Me. State Ret. Sys.*
22 *v. Countrywide Fin. Corp.*, 722 F. Supp. 2d 1157, 1165 (C.D. Cal. 2010).

23 A. Prior Complaints, Including the Nearly Identical MBS Class Action,
24 Triggered Discovery as a Matter of Law

25 Here, the Complaints demonstrate on their face that the federal securities
26 claims against Mr. Mozilo are time-barred. The allegations in the Complaints are
27 substantively identical to the *Stichting*, *Allstate*, and *Progressive* complaints that this
28 Court already found to be time-barred. As the Court found in *Stichting*, *Allstate*,

1 and *Progressive*, other complaints and press reports made clear that a reasonable
2 investor exercising reasonable diligence would have discovered facts sufficient to
3 state every element of the plaintiffs' federal securities claims (including scienter) by
4 late 2007. *Stichting*, 2011 WL 3558173, at *8-13; *see also Allstate*, 2011 WL
5 5067128, at *11; *Progressive*, slip. op. at 3. This finding dooms Plaintiffs' claims
6 here because the Complaints were not filed until 2011, more than three years after
7 the applicable one- and two-year limitations periods began to run.

8 As in *Stichting*, *Allstate*, and *Progressive*, the gravamen of the Complaints is
9 that "Countrywide knowingly and systematically abandoned its underwriting
10 practices." *Compare Stichting*, 2011 WL 3558173, at *7, *Allstate*, 2011 WL
11 5067128, at *11, and *Progressive*, slip. op. at 3 with Appendix B hereto. As this
12 Court has previously held, abandoned underwriting allegations against Countrywide
13 and Mr. Mozilo are not new, having been made by other plaintiffs since 2007.
14 *Stichting*, 2011 WL 3558173, at *8-9 ("Here, the gravamen of Plaintiff's claim is
15 that Countrywide wholly abandoned its underwriting standards. The press and
16 numerous widely reported lawsuits had made exactly this allegation by the end of
17 2007."); *Allstate*, 2011 WL 5067128, at *11; *Progressive*, slip. op. at 3.³ For
18 example, as this Court has recognized, the MBS class action (which was filed on
19 November 14, 2007 and in which Plaintiffs were putative class members) alleged
20 the "the same abandonment of underwriting standards and misrepresentations."
21 *Stichting*, 2011 WL 3558173, at *8; *see also Luther v. Countrywide Home Loans*
22 *Servicing LP*, No. BC380698 (Cal. Super. Ct. Nov. 14, 2007).⁴

23 ³ *See also, e.g., Ark. Teacher Ret. Sys., Fire & Police Pension Ass'n of Colo.*
24 *v. Mozilo*, No. 07-cv-06923-MRP (MANx) (C.D. Cal. Oct. 24, 2007); *Argent*
25 *Classic Convertible Arbitrage Fund L.P. v. Countrywide Fin. Corp.*, No. 07-CV-
26 07097-MRP (MANx) (C.D. Cal. Oct. 30, 2007); *New York City Employees' Ret.*
27 *Sys. v. Countrywide Fin. Corp.*, No. 08-cv-00492-ODW (C.D. Cal. Jan. 25, 2008);
In re Countrywide Fin. Corp. Deriv. Litig., No. 07-CV-06923-MRP (MANx) (C.D.
Cal. Feb. 15, 2008); *In re Countrywide Fin. Corp. Sec. Litig.*, No. 07-CV-05295-
MRP (MANx) (C.D. Cal. Apr. 11, 2008).

28 ⁴ Relying on *Luther*, Plaintiffs claim the benefit of class action tolling under
American Pipe & Construction Co. v. Utah, 414 U.S. 528 (1974). *See Am. Fidelity*

1 The Complaints themselves concede that Plaintiffs' allegations are not new:
2 "Defendants' activities as a buyer, financier and securitizer of residential mortgage
3 loans have been the focus of numerous government investigations and prosecutions
4 as well as private investor lawsuits." *Sealink* Compl. ¶ 34; *see also Am. Fidelity*
5 *Am. Compl.* ¶ 198 ("Countrywide's unlawful conduct ha[s] prompted a substantial
6 number of public and private inquiries, investigations and actions."); *National*
7 *Integrity* Compl. ¶¶ 13-14; *Western & Southern Am. Compl.* ¶¶ 13-14. Indeed,
8 Plaintiffs cite many of these complaints as purported evidence of their claims. *See,*
9 *e.g., Am. Fidelity Am. Compl.* ¶¶ 59, 100-03, 154-157, 159, 161-62, 167, 174-76,
10 178-79, 183, 204-06, 208-10, 213, 237-39; *National Integrity* Compl. ¶¶ 107-111,
11 163, 247-49, 253-54; *Sealink* Compl. ¶¶ 6, 82, 84-85, 92-93; *Western & Southern*
12 *Am. Compl.* ¶¶ 107-111, 163, 247-49, 253-54.

13 By copycatting allegations made long ago in shareholder, regulatory, and
14 other actions against Countrywide and Mr. Mozilo, the Complaints demonstrate on
15 their face that the claims against Mr. Mozilo are time-barred as a matter of law.⁵

16
17 Am. Compl. ¶¶ 380-90, 444, 456; *National Integrity* Compl. ¶¶ 389-98; *Putnam*
18 *Compl.* ¶¶ 105-16; *Western & Southern Am. Compl.* ¶¶ 389-98. However, in
19 addition to the reasons tolling does not apply to all defendants, tolling cannot apply
20 to Mr. Mozilo **because he was not a defendant in the MBS class action.** *See*
21 *Arneil v. Ramsey*, 550 F.2d 774, 782 n.10 (2d Cir. 1977), *overruled on other*
22 *grounds by Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 348 50 (1983);
23 *Footbridge Ltd. Trust v. Countywide Fin. Corp.*, 770 F. Supp. 2d 618, 624 n.1
24 (S.D.N.Y. 2011).

25 ⁵ The Section 15 and Section 20(a) control person claims against Mr. Mozilo
26 should be dismissed for the additional reason that Plaintiffs cannot plead valid and
27 timely predicate violations under the Securities Act or the Exchange Act. *Stichting*,
28 2011 WL 3558173, at *11; *Allstate*, 2011 WL 5067128, at *13. In addition, the
Section 15 claim is so stale as to Mr. Mozilo that it is barred by the Securities Act's
three-year statute of repose. 15 U.S.C. § 77m; *Am. Fidelity Am. Compl.* ¶ 5
(alleging most recent MBS purchase took place in November 2007); *see also*
Countrywide Defs' Mem. ISO Mot. to Dismiss ("Countrywide Defs' Mem.")
Part III.A. Likewise, the Section 20(a) claims with respect to many of the MBS
securitizations are also barred by the Exchange Act's five-year statute of repose. 28
U.S.C. § 1658(b)(2); *National Integrity* Compl. ¶¶ 75, Ex. A (alleging ten MBS
purchases took place more than five years ago); *Western & Southern Am. Compl.*
¶¶ 75, Ex. A (alleging thirty-eight MBS purchases took place more than five years
ago); *see also Countrywide Defs' Mem. Parts IV.B & V.B.2.*

B. The SEC Complaint Cannot Revive Plaintiffs' Time-Barred Claims

Certain Plaintiffs suggest that their claims are timely because they could not have discovered scienter or certain documents and deposition testimony until the SEC complaint was filed on June 4, 2009. *See Am. Fidelity Am. Compl.* ¶¶ 104, 136; *National Integrity Compl.* ¶¶ 85, 385; *Putnam Compl.* ¶¶ 86, 118; *Western & Southern Am. Compl.* ¶¶ 85, 385. However, this Court already rejected this very argument in *Stichting*:

Plaintiff's reliance on semantic distinctions and supposedly new revelations in the SEC complaint is not persuasive. The SEC complaint may perhaps include more detail than earlier-filed complaints, but it does not contain any fundamentally new revelation. All the facts alleged had been widely reported already[.]

Stichting, 2011 WL 3558173, at *11.⁶ "Other plaintiffs recognized that such facts were available by 2007, and this Court subsequently held that those plaintiffs had pleaded scienter adequately." *Id.*; *see also In re Countrywide Fin. Corp. Sec. Litig.*, 588 F. Supp. 2d 1132 (C.D. Cal. 2008); *In re Countrywide Fin. Corp. Derivative Litig.*, 554 F. Supp. 2d 1044 (C.D. Cal. 2008). This Court's prior opinions on this topic find ample support in the law. *Premium Plus Partners, L.P. v. Goldman, Sachs & Co.*, 648 F.3d 533, 537 (7th Cir. 2011) (Easterbrook, C. J.) (noting that "[t]here's no magic in the filing date of the Commission's complaint," and that "[i]t would be silly to conclude that, because the SEC did not file its complaint until September 2003, no reasonably diligent person could have inferred scienter

⁶ Plaintiffs' argument is also undercut by their own allegations, which state that cases well prior to the SEC complaint addressed the very same issues. *See, e.g., Am. Fidelity Am. Compl.* ¶ 252 ("Other courts have similarly found that allegations similar to those made here relating to the activities of Countrywide and its executives present a 'cogent and compelling inference of scienter.'" (citing this Court's decision in *In re Countrywide Fin. Corp. Sec. Litig.*, 588 F. Supp. 2d 1132 (C.D. Cal. 2008)); *Western & Southern Compl.* ¶ 319 (same). Ironically, *National Integrity* (which is being prosecuted by the same counsel who represents *Western & Southern*) was filed more than two years after the SEC complaint.

1 earlier.”). Accordingly, Plaintiffs cannot rely on the filing date of the SEC
2 complaint to rescue their belated claims.

3 C. An Allegedly New MBS Valuation Model Cannot Revive Plaintiffs’
4 Time-Barred Claims

5 The supposed facts triggering discovery are an ever-moving target in these
6 MDL cases, changing shape every time another milestone passes or another decision
7 is rendered by this Court on the statute of limitations. After this Court’s decision in
8 *Stichting*, the plaintiffs in *Western & Southern* requested and were granted
9 permission to file an amended complaint. So they changed their supposed facts that
10 triggered discovery. Whereas previously it was the SEC complaint (*Western &*
11 *Southern* Compl. ¶¶ 4, 16, 124, 260), it has now changed to an entirely new theory.
12 Now *Western & Southern* contends it could not have discovered its claims until a
13 new MBS valuation model was developed in mid-to-late 2009 and it determined that
14 its MBS were impaired. *Western & Southern* Am. Compl. ¶¶ 372-83; *see also*
15 *National Integrity* Compl. ¶¶ 372-83.⁷ Plaintiffs miss the mark again.⁸

16 Plaintiffs’ new theory is irrelevant to this Court’s prior reasoning in
17 dismissing nearly-identical cases. As this Court already found, a reasonably diligent

18 ⁷ *National Integrity* was one of the plaintiffs in the original *Western &*
19 *Southern* complaint and is represented by the same counsel. However, rather than
20 file an amended complaint, *National Integrity* attempted to hedge its bets by filing a
21 spinoff action in New York (apparently hoping to secure a longer statute of
22 limitations). *National Integrity* also had a change of heart on what triggered its
23 discovery of its claims, moving from the SEC complaint to the same new theory
24 *Western & Southern* proffers.

25 ⁸ *Western & Southern* and *National Integrity* proffer other supposed reasons
26 why they could not have discovered their claims until recently. *See Western &*
27 *Southern* Am. Compl. ¶ 384 (alleging no diminution in interest or principal
28 payments until February 2010); ¶¶ 386-87 (alleging fraudulent concealment based
on “robo-signing,” forgery, and perjury relating to foreclosures practices), ¶ 387
(alleging fraudulent concealment based on intimidation of whistleblowers); *National*
Integrity Compl. ¶¶ 384, 386-87. As an initial matter, under Plaintiffs’ own theory,
alleged fraudulent concealment occurred long after Mr. Mozilo retired from
Countrywide Financial Corporation (“CFC”) on July 1, 2008. *Western & Southern*
Am. Compl. ¶ 28; *National Integrity* Compl. ¶ 28. Plaintiffs also ignore that this
Court has already found that MBS investors exercising reasonable diligence would
have discovered their claims years ago. There is no reason for a different result
here. *See also* Countrywide Defs’ Mem. Parts IV.B, IV.C, V.B.2 & V.B.3.

1 MBS investor would have discovered facts giving rise to their alleged claims years
2 ago. *Stichting*, 2011 WL 3558173, at *11; *Allstate*, 2011 WL 5067128, at *11-13;
3 *Progressive*, slip. op. at 3. Indeed, virtually identical arguments were rejected in
4 *Allstate*. Like *Western & Southern* and *National Integrity*, Allstate claimed it could
5 not have discovered the facts constituting its claims until its MBS were downgraded
6 and certain loan-level analyses were conducted. *Allstate*, 2011 WL 5067128, at *11.
7 This Court rejected both arguments, finding that the plaintiffs were confusing facts
8 with summaries and opinions. *Id.* at *11-13. The gist of all of these MDL cases is
9 that Countrywide allegedly “abandoned underwriting” and that this negatively
10 affected the risk profile (and therefore the value) of Plaintiffs’ MBS. Under
11 Plaintiffs’ own theory, those facts were known long ago, and Plaintiffs’ attempts to
12 twist models, tools, and summaries into new facts is just a futile and improper
13 attempt to delay the running of the limitations period *ad infinitum*.

14 **IV. ALL OF PLAINTIFFS’ STATE SECURITIES CLAIMS ARE**
15 **TIME-BARRED AS TO MR. MOZILO**

16 Mr. Mozilo faces claims under two blue-sky statutes: (1) the Connecticut
17 Uniform Securities Act (“CUSA”) in *Putnam*; and (2) the Ohio Securities Act in
18 *National Integrity* and *Western & Southern*. Both the Connecticut and Ohio
19 blue-sky statutes are subject to a two-year statute of limitations. Conn. Gen. Stat.
20 § 36b-29(f); *Keith v. Lighthouse Sec., Ltd.*, No. 5:92 CV 0185(GLG), 1997 WL
21 380430, at *6 (D. Conn. June 17, 1997) (“Claims brought pursuant to CUSA are
22 governed by the statute of limitations set forth in the remedial provision of CUSA,
23 § 36-498(a) (now § 36b–29).”); Ohio Rev. Code § 1707.43(B).

24 Under CUSA, the two-year limitations period runs from discovery of the
25 alleged misrepresentation or from the date it should have been discovered in the
26 exercise of reasonable diligence. Conn. Gen. Stat. § 36b-29(f). The two-year
27 limitations period under the Ohio Securities Act likewise runs from the time the
28 plaintiff “knew, or had reason to know” of the facts underlying its claims. Ohio

1 Rev. Code § 1707.43(B); *Kondrat v. Morris*, 118 Ohio App. 3d 198, 205 (Ohio Ct.
2 App. 1997); *Loyd v. Huntington Bank*, No. 1:08 CV 2301, 2009 WL 1767585, at *9
3 (N.D. Ohio June 18, 2009) (“[C]onstructive notice is . . . sufficient to start the
4 two-year period running under [the Ohio Securities Act.]”); *Wyser-Pratte Mgmt. Co.*
5 *v. Telxon Corp.*, 413 F.3d 553, 562-63 (6th Cir. 2005) (statute of limitations under
6 the Ohio Securities Act triggered by inquiry notice).

7 Because a two-year statute of limitations applies, the claims against
8 Mr. Mozilo under CUSA and the Ohio Securities Act are untimely for the same
9 reasons that the federal securities claims against him are untimely. *See supra*
10 Part III; *see also Harman v. Bench Sec. Corp.*, No. CV 950534266S, 1998 WL
11 46691, at *1-2 (Conn. Super. Ct. Jan. 22, 1998) (holding CUSA claim time-barred
12 because the statute of limitations was triggered by a prior class action complaint);
13 *Loyd*, 2009 WL 1767585, at *10-11 & n.24 (holding claims time-barred because the
14 limitations period under the Ohio Securities Act was triggered by, among other
15 things, a prior class action lawsuit concerning “nearly identical” allegations).

16 The *National Integrity* and *Western & Southern* Plaintiffs claim their Ohio
17 Securities Act claims are tolled under *Vaccariello v. Smith & Nephew*
18 *Richards, Inc.*, 763 N.E.2d 160 (Ohio 2002). *See National Integrity* Compl. ¶ 388;
19 *Western & Southern* Am. Compl. ¶ 388. However, tolling cannot apply to
20 Mr. Mozilo because he was not a defendant in the MBS class action. *Wyser-Pratte*,
21 413 F.3d at 567-68 (“[C]lass action tolling does not apply to a defendant not named
22 in the class action complaint.”); *see also supra* note 4.

23 **V. PLAINTIFFS’ CIVIL CONSPIRACY CLAIMS ARE TIME-BARRED**
24 **AS TO MR. MOZILO**

25 Mr. Mozilo faces civil conspiracy claims in *National Integrity* and *Western &*
26 *Southern*. Because *National Integrity* was transferred from the Southern District of
27 New York pursuant to 28 U.S.C. Section 1407, New York law applies to the
28 common-law claims in that case. *In re Nucorp Energy Sec. Litig.*, 772 F.2d 1486,

1 1491-92 (9th Cir. 1985). However, because National Integrity is an Ohio resident,
2 New York's borrowing statute provides that National Integrity's claims must be
3 timely under both New York and Ohio law. N.Y. C.P.L.R. 202.⁹ Ohio's statute of
4 limitations also applies to the civil conspiracy claim in *Western & Southern* because
5 *Western & Southern* was transferred to this Court from the Southern District of
6 Ohio. *In re Nucorp*, 772 F.2d at 1491-92.

7 Civil conspiracy is a derivative claim that requires a viable underlying cause
8 of action. *Ford Motor Credit Co. v. Jones*, No. 92428, 2009 WL 1912626, at *4
9 (Ohio Ct. App. July 2, 2009). "Thus, the applicable statute of limitations for the
10 underlying cause of action applies to the civil conspiracy charge." *Id.* Here, the
11 underlying causes of action are based on federal, state, and common-law claims of
12 securities fraud. *National Integrity* Compl. ¶ 496; *Western & Southern* Am. Compl.
13 ¶ 496. Accordingly, the civil conspiracy claims are untimely to the extent the
14 underlying securities fraud claims are untimely.

15 As discussed above, the underlying federal securities claims are time-barred
16 by a two-year statute of limitations. *See supra* Part III. The underlying Ohio
17 Securities Act claims are also time-barred by a two-year statute of limitations. *See*
18 *supra* Part IV. The underlying common-law claims are time-barred as well. Under
19 Ohio law, common-law claims "inextricably intertwined" with the sale of securities
20 are subject to the Ohio Securities Act's two-year statute of limitations. *Loyd*, 2009
21 WL 1767585, at *8-9 (applying two-year limitations period to common-law fraud
22 and civil conspiracy); *Hardin v. Reliance Trust Co.*, No. 1:04 CV 02079, 2006 WL

23 ⁹ Under New York's borrowing statute, a cause of action by a non-New York
24 resident must be timely under the limitations periods of both New York and the
25 jurisdiction where the cause of action accrued. N.Y. C.P.L.R. 202. "When an injury
26 is purely economic, the place of injury for purposes of the borrowing statute is
27 where the economic impact of defendant's conduct is felt, which is usually the
28 plaintiff's place of residence." *Gordon & Co. v. Ross*, 63 F. Supp. 2d 405, 408
(S.D.N.Y. 1999); *see also McMahon & Co. v. Donaldson, Lufkin & Jenrette Sec.*
Corp., 727 F. Supp. 833, 834 (S.D.N.Y. 1989) (residency determined by principal
place of business). As discussed in the Countrywide Defendants' Memorandum,
National Integrity is a resident of Ohio. *See Countrywide Defs' Mem. Part V.B.4.*

1 2850455, at *11 (N.D. Ohio Sept. 29, 2006) (applying two-year limitations period to
2 civil conspiracy claim “shar[ing] the same factual basis” as Ohio Securities Act
3 claim). There is no question that the common-law claims alleged here are
4 “inextricably intertwined” with securities sales. Accordingly, the Ohio Securities
5 Act’s two-year limitations period applies, and the common-law claims are
6 time-barred for all the same reasons. Because the underlying causes of action are
7 untimely, the civil conspiracy claims against Mr. Mozilo fail.

8 **VI. AMERICAN FIDELITY’S AIDING AND ABETTING FRAUD CLAIM**
9 **IS TIME-BARRED AS TO MR. MOZILO**

10 Mr. Mozilo faces an aiding and abetting fraud claim in *American Fidelity*.
11 Because *American Fidelity* was transferred from the Western District of Oklahoma,
12 Oklahoma law applies to this claim. *In re Nucorp*, 772 F.2d at 1491-92. Oklahoma
13 does not recognize a cause of action for aiding and abetting fraud. *Transp. Alliance*
14 *Bank, Inc. v. Arrow Trucking Co.*, No. 10-CV-16-GKF-PJC, 2011 WL 221863, at *5
15 (N.D. Okla. Jan. 21, 2011) (“It does not appear that Oklahoma recognizes a cause of
16 action for acquiescing in, or aiding and abetting, common law fraud.”); *Eastwood v.*
17 *Nat’l Bank of Commerce*, 673 F. Supp. 1068, 1081 (W.D. Okla. 1987). This fact
18 alone is fatal to American Fidelity’s claim against Mr. Mozilo.

19 Moreover, even if Oklahoma recognized a claim for aiding and abetting fraud,
20 the claim would be time-barred because Oklahoma’s statute of limitations for
21 fraud-based claims is two years from discovery. Okla. Stat. tit. 12, § 95(A)(3).¹⁰
22 Under this discovery standard, “[f]raud is deemed to be discovered . . . when in the
23

24 ¹⁰ Oklahoma has a borrowing statute that provides that “[t]he period of
25 limitation applicable to a claim accruing outside of this state shall be that prescribed
26 either by the law of the place where the claim accrued or by the law of this state,
27 whichever last bars the claim.” Okla. Stat. tit. 12, § 105. Because the aiding and
28 abetting claim against Mr. Mozilo necessarily accrued in either Oklahoma or
California, the Court need not determine which state’s statute of limitations applies
because the aiding and abetting claim is time-barred under both. *Stichting*, 2011
WL 3558173, at *12 (aiding and abetting fraud claim against Mr. Mozilo
time-barred by California’s three-year statute of limitations).

1 exercise of reasonable diligence it could have been discovered.” *Gallagher v. Salem*,
2 No. CIV-07-974-F, 2009 WL 2591669, at *6 (W.D. Okla. Aug. 20, 2009) (quoting
3 *Walker v. Walker*, 310 P.2d 760, 763 (Okla. 1957)). Thus, if Oklahoma recognized
4 a cause of action for aiding and abetting fraud (which it does not), the aiding and
5 abetting fraud claim against Mr. Mozilo would be untimely for the same reasons that
6 the federal securities claims against him are untimely. *See supra* Part III.

7 **VII. SEALINK’S NEGLIGENT MISREPRESENTATION CLAIM IS**
8 **TIME-BARRED AS TO MR. MOZILO**

9 Mr. Mozilo faces a negligent misrepresentation claim in *Sealink*. Because
10 *Sealink* was transferred to this Court from the Southern District of New York, New
11 York law applies. *In re Nucorp*, 772 F.2d at 1491-92. In New York, the statute of
12 limitations for negligent misrepresentation is three years from the date of the alleged
13 misstatement. N.Y. C.P.L.R. 214(4); *Ambassador v. Euclid*, No. 80 Civ. 1235
14 (CBM), 1984 WL 341, at *4 n.7 (S.D.N.Y. May 24, 1984); *Country World v.*
15 *Imperial Frozen Foods Co.*, 589 N.Y.S.2d 81, 82 (N.Y. App. Div. 1992).

16 Here, the negligent misrepresentation claim against Mr. Mozilo is untimely.
17 Although *Sealink* has not actually alleged that Mr. Mozilo made any misstatements,
18 all of *Sealink*’s MBS purchases were made more than three years before the
19 complaint was filed on September 29, 2011. *See Sealink* Compl. ¶ 2 (alleging MBS
20 purchases took place between 2005 and 2007). Because any statements on which
21 *Sealink* allegedly relied in making these purchases were necessarily made even
22 earlier, the negligent misrepresentation claim against Mr. Mozilo is time-barred.

23 **VIII. THE STATE LAW CLAIMS AGAINST MR. MOZILO IN AMERICAN**
24 **FIDELITY AND WESTERN & SOUTHERN FAIL FOR LACK OF**
25 **PERSONAL JURISDICTION**

26 *American Fidelity* and *Western & Southern* were originally brought in
27 Oklahoma and Ohio, respectively. They were then transferred to this Court as part
28 of the MDL for pre-trial purposes only. Consequently, if the transferor courts did

1 not have personal jurisdiction over Mr. Mozilo, the cases must be dismissed. *In re*
2 *Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 2005 WL 2988715, at
3 *2 (N.D. Cal. Nov. 7, 2005) (“In MDL actions such as this one, the court is entitled
4 to exercise personal jurisdiction over each defendant only to the same degree that
5 the original transferor court could have.”) (citing *Maricopa County v. Am. Petrofina,*
6 *Inc.*, 322 F. Supp. 467, 469 (N.D. Cal. 1971)). As set forth more fully below,
7 Mr. Mozilo had no contact with Oklahoma or Ohio at all, much less the contact
8 required by the long-arm statutes and the United States Constitution.

9 Mr. Mozilo recognizes that the federal securities law claims have nationwide
10 service of process provisions. However, because those claims are untimely as a
11 matter of law (*see supra* Part III), they cannot form the basis for personal
12 jurisdiction. *See Malone v. Nuber*, No. C07-2046RSL, 2009 WL 481285, at *1
13 (W.D. Wash. Feb. 23, 2009) (“[O]nce the federal claims were dismissed, they can
14 no longer provide a basis for asserting pendent personal jurisdiction over defendants
15 for the state law claims.”); *Morley v. Cohen*, 610 F. Supp. 798, 823 (D. Md. 1985)
16 (same).¹¹ Consequently, the state law claims against Mr. Mozilo in *American*
17 *Fidelity* and *Western & Southern* fail for lack of personal jurisdiction.

18 A. Plaintiffs Bear the Burden of Establishing Personal Jurisdiction

19 On a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the
20 burden of demonstrating that the court has jurisdiction. *Harris Rutsky & Co. Ins.*

21 ¹¹ *See also D’Addario v. Geller*, 264 F. Supp. 2d 367, 387-88 (E.D. Va. 2003)
22 (where personal jurisdiction is based on a federal statutory nationwide service
23 provision, “if the court were to later determine that the federal claim(s) should be
24 dismissed against a defendant, the state claims against that defendant would also
25 have to be dismissed, unless another basis for asserting personal jurisdiction
26 exists”); *Auto Channel, Inc. v. Speedvision Network, LLC*, 995 F. Supp. 761, 762
27 (W.D. Ky. 1997) (“Since all antitrust claims against Speedvision and Continental
28 have been dismissed, this Court no longer has personal jurisdiction over the parties
pursuant to the nationwide service of process provision set forth in 15 U.S.C.
§ 22.”); *Bill Rea Ins. Assoc., Inc. v. Nat’l Fin. Servs. Corp.*, 860 F. Supp. 1181, 1184
(W.D. Tex. 1994) (“Plaintiffs dropped their cause of action against National under
the Federal Securities Act. Thus, the nationwide service of process provisions of the
Securities Act were no longer applicable and traditional concepts of personal
jurisdiction over the remaining state law claims were brought into play.”).

1 *Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1128-29 (9th Cir. 2003). Moreover,
2 the Court need not assume the truth of allegations in a pleading that are contradicted
3 by sworn affidavit. *Data Disc, Inc. v. Sys. Tech. Assoc., Inc.*, 557 F.2d 1280, 1284
4 (9th Cir. 1977). In addition, the plaintiff must establish both that the forum state's
5 long-arm statute authorizes jurisdiction *and* that the exercise of jurisdiction accords
6 with constitutional principles of due process. *Amba Mktg. Sys., Inc. v. Jobar Int'l,*
7 *Inc.*, 551 F.2d 784, 787 (9th Cir. 1977). Western & Southern and American Fidelity
8 have not alleged, nor can they establish, either with respect to Mr. Mozilo.

9 B. The Long-Arm Statutes Do Not Authorize Jurisdiction

10 Oklahoma's long-arm statute is coextensive with Constitutional due process.
11 *Kennedy v. Freeman*, 919 F.2d 126, 128 (10th Cir. 1990). As demonstrated in the
12 following section, American Fidelity's complaint fails to satisfy Constitutional due
13 process, and thus by definition, it fails to satisfy Oklahoma's long-arm statute.

14 Ohio's long-arm statute specifically enumerates the circumstances in which
15 personal jurisdiction attaches.¹² Western & Southern alleges none of these statutory
16 bases for jurisdiction in Ohio. For instance, Western & Southern does not and
17 cannot allege that Mr. Mozilo transacted any business in Ohio, contracted to supply

18 ¹² Ohio's long-arm statute authorizes jurisdiction under the following
19 expressly enumerated circumstances: "(1) Transacting any business in this state;
20 (2) Contracting to supply services or goods in this state; (3) Causing tortious injury
21 by an act or omission in this state; (4) Causing tortious injury in this state by an act
22 or omission outside this state if he regularly does or solicits business, or engages in
23 any other persistent course of conduct, or derives substantial revenue from goods
24 used or consumed or services rendered in this state; (5) Causing injury in this state
25 to any person by breach of warranty expressly or impliedly made in the sale of
26 goods outside this state when he might reasonably have expected such person to use,
27 consume, or be affected by the goods in this state, provided that he also regularly
28 does or solicits business, or engages in any other persistent course of conduct, or
29 derives substantial revenue from goods used or consumed or services rendered in
30 this state; (6) Causing tortious injury in this state to any person by an act outside this
31 state committed with the purpose of injuring persons, when he might reasonably
32 have expected that some person would be injured thereby in this state; (7) Causing
33 tortious injury to any person by a criminal act, any element of which takes place in
34 this state, which he commits or in the commission of which he is guilty of
35 complicity; (8) Having an interest in, using, or possessing real property in this state;
36 or (9) Contracting to insure any person, property, or risk located within this state at
37 the time of contracting." Ohio Rev. Code § 2307.382.

1 goods in Ohio, owns any property in Ohio, or insured anyone in Ohio. Nor does
2 Western & Southern allege that Mr. Mozilo acted with the specific purpose of
3 injuring Plaintiffs in Ohio, engaged in any persistent course of conduct directed at
4 Ohio, or personally derived substantial revenue from goods used or services
5 rendered in Ohio. Indeed, Western & Southern alleges no contact by Mr. Mozilo
6 with Ohio at all, because there was none. Mr. Mozilo is a resident of California. He
7 does not own property in Ohio. He does not pay taxes in Ohio and has not even
8 visited the state since 2002. Mozilo Decl. ¶¶ 2-3. He did not engage personally in
9 any business, hold a business license, or maintain an office in Ohio. *Id.* ¶¶ 4-5, 7.
10 Under these circumstances, the *Western & Southern* amended complaint fails the
11 personal jurisdiction test of Ohio's long-arm statute. *Hoover Co. v. Robeson Indus.*
12 *Corp.*, 904 F. Supp. 671, 674 (N.D. Ohio 1995) ("The nonresident defendant must
13 do some act or consummate some transaction within the forum.").¹³

14 Indeed, the only actions Mr. Mozilo is alleged to have taken were in his
15 capacity as an officer of CFC. *See Am. Fidelity Am. Compl.* ¶ 27 (actions by
16 officers were committed "while those individuals were acting within the actual or
17 implied scope of their authority"); *Western & Southern Am. Compl.* ¶ 44 (same).
18 These actions are barred by the "fiduciary shield" doctrine from serving as a basis
19

20 ¹³ Western & Southern asserts a new "conspiracy" claim against Mr. Mozilo
21 under the Ohio Corrupt Activities Act, which was not asserted in Western &
22 Southern's previous complaint. Although the Ohio Corrupt Activities Act contains
23 a provision relating to personal jurisdiction, Ohio Rev. Code § 2923.34(K), a state
24 statute cannot extend personal jurisdiction beyond the reach of the United States
25 Constitution. *See, e.g., MFS Series Trust III ex rel. MFS Mun. High Income Fund v.*
26 *Grainger*, 96 P.3d 927, 933 (Utah 2004) ("Permitting allegations of liability under
27 Utah's securities laws to automatically give rise to personal jurisdiction, without
28 first considering whether each defendant 'purposefully availed' himself of the
benefits and protections of Utah's laws, would be to ignore the due process
requirements of the fourteenth amendment.") (citing *Int'l Shoe v. Washington*, 326
U.S. 310, 316 (1945)); *see also Irizarry v. East Longitude Trading Co., Ltd.*, 296 F.
Supp. 2d 862, 866-67 (N.D. Ohio 2003) (no personal jurisdiction under Constitution
despite meeting Ohio's long-arm statute); *Costaras v. NBC Universal, Inc.*, 409 F.
Supp. 2d 897, 905 (N.D. Ohio 2005) (same). As demonstrated in the following
section, Constitutional due process precludes Western & Southern's complaint
against Mr. Mozilo, including the new Ohio Corrupt Activities Act claim.

1 for personal jurisdiction. Under both Ohio and Oklahoma law, the fiduciary shield
2 doctrine bars jurisdiction over corporate officers based solely on acts carried out in
3 their normal corporate capacities. *See Franklin Prod., Inc. v. Gen. Nutrition Corp.*,
4 No. 2:05-cv-1061, 2007 WL 2462665, at *3 (S.D. Ohio Aug. 27, 2007) (“The
5 fiduciary shield doctrine generally prevents the exercise of personal jurisdiction over
6 a corporate officer whenever an out-of-state officer’s contacts with the forum state
7 occur by virtue of his or her acts as a fiduciary.”); *Hnath v. Hereford*, 757 F. Supp.
8 2d 1130, 1136 (N.D. Okla. 2010) (“Under the fiduciary shield doctrine, exercise of
9 personal jurisdiction over an individual may not be based solely on acts the
10 individual performed in a purely representative capacity.”).

11 C. Constitutional Due Process Does Not Authorize Jurisdiction

12 In determining whether the requirements of federal due process are met, the
13 Court should apply its own circuit’s law. *In re Dynamic*, 2005 WL 2988715, at *2.
14 For a court to exercise personal jurisdiction over a nonresident defendant consistent
15 with due process, that defendant must have “certain minimum contacts” with the
16 relevant forum “such that the maintenance of the suit does not offend ‘traditional
17 notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S.
18 310, 316 (1945); *SEC v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007).

19 Jurisdiction over a nonresident defendant may be “general” or “specific.”
20 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-15 (1984).
21 General personal jurisdiction exists where the defendant’s contacts with the forum
22 state are substantial, “continuous and systematic,” irrespective of whether the
23 transaction at issue in the case arose from contacts with the forum state. *Id.* at
24 416 & n.9. Specific personal jurisdiction may be asserted only where the claim
25 itself – here, alleged fraud in the sale of MBS – arises from the defendant’s contacts
26 with the forum state. *Id.*

27 As to Mr. Mozilo, jurisdiction in *American Fidelity* and *Western & Southern*
28 fails under both tests.

1 1. Mr. Mozilo's Contacts Must Be Analyzed Separately from
2 Countrywide Financial Corporation's Contacts

3 Due process requires that "[e]ach defendant's contacts with the forum State
4 must be assessed individually." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770,
5 781 n.13 (1984); *see also Brown v. Gen. Steel Domestic Sales, LLC*, No. 08-cv-
6 00779 MMM (SHX), 2008 WL 2128057, at *10 (C.D. Cal. May 19, 2008) ("The
7 fact that a corporation is subject to jurisdiction in the forum state, however, does not
8 necessarily confer jurisdiction over its individual officers. Instead, the court must
9 examine the individual's contacts with the forum to determine if they are sufficient
10 to warrant the exercise of jurisdiction over him in connection with forum-related
11 claims."). This means that Mr. Mozilo's former status as the CEO of CFC is
12 insufficient to subject him to this Court's jurisdiction. As the Supreme Court has
13 emphasized, "jurisdiction over an employee does not automatically follow from
14 jurisdiction over the corporation which employs him; nor does jurisdiction over a
15 parent corporation automatically establish jurisdiction over a wholly owned
16 subsidiary." *Keeton*, 465 U.S. at 781 n.13.

17 Consequently, CFC's contacts with Ohio and Oklahoma (assuming that the
18 corporation had sufficient contacts) cannot be imputed to Mr. Mozilo. Only
19 Mr. Mozilo's own, personal actions can subject him to personal jurisdiction in
20 Oklahoma or Ohio. As demonstrated herein, Mr. Mozilo had no contact at all with
21 Oklahoma or Ohio, much less the heightened contact required by due process for
22 personal jurisdiction to attach.

23 2. Mr. Mozilo Is Not Subject to General Jurisdiction

24 General jurisdiction cannot be asserted here because Mr. Mozilo did not have
25 substantial, "continuous and systematic" contacts with Oklahoma or Ohio.
26 *Helicopteros*, 466 U.S. at 416 & n.9. The complaints allege no relationship between
27 Mr. Mozilo and Oklahoma or Ohio at all; nor could they. Mr. Mozilo is a California
28 resident. Mozilo Decl. ¶ 2. He owns no property in Oklahoma or Ohio. *Id.* ¶ 3. He

1 does not maintain any ongoing contact with Oklahoma or Ohio and did not
2 personally conduct business in Oklahoma or Ohio during the relevant time period.
3 *Id.* ¶ 4. In fact, Mr. Mozilo did not enter either Oklahoma or Ohio at all during the
4 time period in which the MBS at issue were securitized and sold. *Id.* ¶ 5. In short,
5 Mr. Mozilo had no contact with the forum states at all, let alone the substantial,
6 “continuous and systematic” contacts necessary for general jurisdiction to apply.
7 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004).

8 3. Mr. Mozilo Is Not Subject to Specific Jurisdiction

9 The Ninth Circuit has adopted a three-part test to determine whether specific
10 jurisdiction exists over a defendant: (1) the non-resident defendant must
11 purposefully direct his activities or consummate some transaction with the forum or
12 resident thereof; or perform some act by which he purposefully avails himself of the
13 privilege of conducting activities in the forum, thereby invoking the benefits and
14 protections of its laws; (2) the claim must be one which arises out of or relates to the
15 defendant’s forum-related activities; and (3) the exercise of jurisdiction must
16 comport with fair play and substantial justice, *i.e.* it must be reasonable.
17 *Schwarzenegger*, 374 F.3d at 802. Plaintiffs fail to meet every prong of this test.

18 a. ***No Purposeful Availment/Direction***

19 Purposeful availment and purposeful direction are distinct concepts, with
20 purposeful availment used in “suits sounding in contract” and purposeful direction
21 used in “suits sounding in tort.” *Schwarzenegger*, 374 F.3d at 802. Plaintiffs’
22 claims sound in tort, and Plaintiffs cannot show that Mr. Mozilo purposefully
23 directed actions at either Ohio or Oklahoma.¹⁴

24 ¹⁴ Plaintiffs cannot satisfy the purposeful availment test either. They allege
25 no action by Mr. Mozilo that took place within Oklahoma or Ohio; therefore they
26 have not alleged that he purposefully availed himself of the privileges of conducting
27 activities there. *See Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1156 (9th Cir.
28 2006) (where “[a]ll of [the defendant’s] action identified by [the plaintiff] is action
taking place outside the forum,” there is no purposeful availment). The *American*
Fidelity plaintiffs make the boilerplate allegation that the defendants “transact
business” in this district. *Am. Fidelity* Am. Compl. ¶ 30. Not only does this
allegation impermissibly lump Mr. Mozilo with the other defendants, but it is clearly

Purposeful direction requires: (1) the defendant committed an intentional act; (2) expressly aimed at the forum state; (3) causing harm that the defendant knows is likely to be suffered in the forum state. *Schwarzenegger*, 374 F.3d at 805 (citation omitted). To find that the defendant “expressly aimed” his conduct at the forum state, a plaintiff must allege that the defendant did “something more than commit a foreign act with foreseeable effects in the forum state” – for instance by showing “individualized targeting” of residents in the forum state. *Pebble Beach*, 453 F.3d at 1157 (internal quotations and citation omitted); *Alsop v. Carolina Custom Products, Inc.*, No. EDCV 07-212-VAP, 2007 WL 2441025, at *7 (C.D. Cal. Jun. 29, 2007) (“[D]efendant must ‘individually target’ the forum state rather than just commit an act that has foreseeable effects in the forum state.”). This standard is a high standard, and generalized incantations of directing corporate activity will not suffice. *Ind. Plumbing Supply, Inc. v. Sd. of Lynn, Inc.*, 880 F. Supp. 743, 751 (C.D. Cal. 1995) (corporate officer’s authorization of infringing advertisements published in forum state was insufficient to establish special personal jurisdiction). Here, Plaintiffs have come nowhere close to meeting their burden of showing that Mr. Mozilo individually targeted Ohio or Oklahoma in any way.

In *American Fidelity*, Plaintiffs make the boilerplate allegation that “Defendants are also subject to personal jurisdiction in in this district.” *Am. Fidelity* Am. Compl. ¶ 30. However, Plaintiffs do not allege even one specific action by Mr. Mozilo expressly aimed at Oklahoma, and boilerplate allegations are not sufficient in light of Mr. Mozilo’s declaration denying contacts with Oklahoma. See *Data Disc*, 557 F.2d at 1284 (conclusory personal jurisdiction allegations fail against declaration). In *Western & Southern*, Plaintiffs make no specific allegations

contradicted by Mr. Mozilo’s declaration. See Mozilo Decl. ¶¶ 4-5; *Keeton*, 465 U.S. at 781 n.13 (group personal jurisdiction allegations are improper); *Data Disc*, 557 F.2d at 1284 (conclusory personal jurisdiction allegations fail against declaration).

1 regarding the basis for personal jurisdiction over Mr. Mozilo, aside from the
2 nationwide service of process under federal securities law.

3 Neither set of Plaintiffs allege any facts showing that Mr. Mozilo took any
4 part in the core allegation of fraud here – *fraud in the sale of MBS*. Mr. Mozilo was
5 the CEO of a parent company which, with its subsidiaries, employed over 50,000
6 people. Mozilo Decl. ¶ 8. He was not an officer or director of any of the
7 subsidiaries that sold or securitized the MBS at issue in this case. *Id.* ¶ 9.
8 Moreover, there is no allegation that Mr. Mozilo even read the MBS offering
9 documents, much less that he knew they were false and disseminated them to Ohio
10 or Oklahoma intending to harm residents there. *Cf. Allstate*, 2011 WL 5067128, at
11 *20-21 (differentiating allegations regarding underwriting from allegations
12 regarding the allegedly fraudulent sale of MBS).

13 Plaintiffs cannot overcome these deficiencies by arguing that allegations that
14 Mr. Mozilo “controlled” the operations of CFC and its subsidiaries are sufficient to
15 establish personal jurisdiction. *See, e.g., Am. Fidelity Am. Compl.* ¶¶ 286-99;
16 *Western & Southern Am. Compl.* ¶¶ 305-17. “Control” allegations are not sufficient
17 to show that Mr. Mozilo personally directed activities towards Oklahoma or Ohio.
18 *See Toyz, Inc. v. Wireless Toyz, Inc.*, No. C 09-05091 JF (HRL), 2010 WL 334475,
19 at *7 (N.D. Cal. Jan. 25, 2010) (“Because plaintiffs do not allege an alter ego theory,
20 the Court must determine if the Individual Defendants played a primary role in the
21 alleged wrongdoing intentionally directed at Plaintiffs in [the forum].”). In *Toyz*,
22 the court held that the vague, blanket allegation of the individual defendants’
23 supposed control “does not establish purposeful direction.” *Id.* at *8.

24 Indeed, courts throughout the United States repeatedly have refused to find
25 personal jurisdiction over former officers of Countrywide entities based upon naked
26 assertions (just like the assertions of Plaintiffs here) that those officers controlled
27 Countrywide – uniformly finding that such allegations fail to meet due process
28 requirements. *Office of the Att’y Gen. v. Mozilo*, No. 08-30105 (19) (Fl. Cir. Ct.

1 June 6, 2011) (order granting motion to dismiss), RJN ¶ 3, Ex. 3 (dismissing for lack
2 of personal jurisdiction a Florida Attorney General action against Mr. Mozilo based
3 on allegedly improper lending by Countrywide); *People v. Countrywide Fin. Corp.*,
4 No. 08CH22994 (Ill. Cir. Ct. Jun. 24, 2010) (order granting motion to dismiss), RJN
5 ¶ 4, Ex. 4 (dismissing for lack of personal jurisdiction an Illinois Attorney General
6 action against Mr. Mozilo based on allegedly improper lending by Countrywide);
7 *New Mexico State Inv. Council v. Countrywide Fin. Corp.*, No. D-0101-CV-2008-
8 02289 (N.M. Dist. Ct. Apr. 14, 2009) (order granting motions to dismiss), RJN ¶ 5,
9 Ex. 5 (dismissing for lack of personal jurisdiction a fraud claim brought by a
10 purchaser of MBS against several former officers of Countrywide entities).¹⁵ For
11 personal jurisdiction to be properly asserted over Mr. Mozilo, he must have had
12 *personal* contact with Oklahoma and Ohio, which he did not.

13 *New Mexico* is particularly instructive. In *New Mexico*, like this case, the
14 plaintiffs sued several Countrywide entities and their former officers, alleging that
15 they made false and misleading statements relating to the sale of MBS. Plaintiffs
16 argued that the *New Mexico* court could assert personal jurisdiction over the
17 individual defendants because the MBS sales activities were directed nationwide
18 and because those individual defendants (not including Mr. Mozilo) signed the MBS
19 offering documents at issue in that case. The court flatly rejected the argument,
20 holding that the minimum contacts test and Constitutional due process require more.
21 *Id.*; *New Mexico Hr'g Tr.*, Mar. 6, 2009 (incorporated into Court's Apr. 14, 2009
22 Order), RJN ¶ 6, Ex. 6 at 278-280.

23 The case for dismissal is even stronger here because, unlike the individual
24 defendants dismissed in *New Mexico*, Mr. Mozilo did not even sign the offering
25 documents at issue, nor was he an officer, director, or employee of any of the
26 companies that sold the MBS.

27 ¹⁵ The Illinois Attorney General did not appeal the dismissal, and the Florida
28 decision is currently on appeal.

b. Claims Do Not Arise From Contact

The Ninth Circuit has adopted a “but for” test to determine whether a plaintiff’s claim arises out of a defendant’s forum-related contacts. *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002). Under this test, Plaintiffs must demonstrate that “but for” Mr. Mozilo’s contacts with the forum states, Plaintiffs’ claims would not have arisen. *Id.* Plaintiffs cannot meet this test. They have not alleged any contact by Mr. Mozilo with the forum states but for which they would not have been injured. Indeed, they have not alleged any contact at all. *See In re Dynamic*, 2005 WL 2988715, at *9 (if there are no minimum contacts at all, then by definition the “arising out of” requirement is not met). Moreover, Plaintiffs’ claims arise from the sale of MBS. Because Mr. Mozilo had no involvement in the sale of MBS to Plaintiffs (*see* Mozilo Decl. ¶ 9), Plaintiffs cannot show that their claims arise from his contacts.

c. Exercise of Jurisdiction Not Reasonable

Because Plaintiffs cannot satisfy either of the first two requirements for personal jurisdiction, the Court need not even reach this requirement. However, an independent reason to dismiss the remaining state law claims for lack of personal jurisdiction is that jurisdiction is not reasonable as to Mr. Mozilo. Personal jurisdiction is appropriate only where summoning a defendant “does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe*, 326 U.S. at 316 (citations omitted). Haling Mr. Mozilo into an Oklahoma or Ohio court over MBS sales he had nothing to do with fails this common sense test. The reasonableness determination requires consideration of a number of factors: (1) the extent of the defendant’s purposeful interjection into the forum state; (2) the burden on the defendant in defending in the forum; (3) the extent of the conflict with the sovereignty of the defendant’s state; (4) the forum state’s interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff’s interest in convenient and effective relief;

1 and (7) the existence of an alternative forum. *Glencore Grain*, 284 F.3d at 1125.
2 Here, the factors weigh heavily in Mr. Mozilo's favor. Mr. Mozilo had no contact at
3 all with Plaintiffs or their states. He had nothing to do with the sale of MBS to
4 Plaintiffs. Consequently, no legitimate interest would be served in forcing
5 Mr. Mozilo to defend himself in a trial in Ohio or Oklahoma.

6 **IX. CONCLUSION**

7 For the aforementioned reasons, Mr. Mozilo respectfully requests that the
8 Court dismiss the Complaints against him with prejudice.¹⁶

9
10 Dated: December 7, 2011

Respectfully submitted,

11 IRELL & MANELLA LLP

12
13 By: David Siegel 12/7/11
14 David Siegel
15 Attorneys for Defendant
16 Angelo Mozilo
17
18
19
20
21
22
23
24

25 ¹⁶ The only claims against Mr. Mozilo not addressed herein are Claim No. 3
26 in *Sealink* for aiding and abetting fraud and Claim No. 6 in *National Integrity* for
27 violation of the Ohio Corrupt Activities Act. Those claims should be dismissed with
28 prejudice for the reasons set forth in the Countrywide Defendants Memorandum,
which Mr. Mozilo joins in and incorporates by reference. *See* Countrywide Defs'
Mem. Parts V.A & VIII.

Appendix A:

Statutes of Limitations for Claims Against Mr. Mozilo

***American Fidelity Assurance Co. v. Countrywide Financial Corp.,
No. 11-cv-07167 MRP (MANx) (C.D. Cal. Apr. 11, 2011)***

Claim	Limitations Period	Trigger of Limitations Period
Section 15 of the Securities Act of 1933	One year. 15 U.S.C. § 77m.	Discovery of the alleged misstatement “or after such discovery should have been made by the exercise of reasonable diligence.” 15 U.S.C. § 77m.
Aiding and Abetting Fraud	Two years. Okla. Stat. tit. 12, § 95(A)(3). ¹	Discovery of the alleged fraud or, when in the exercise of reasonable diligence, it could have been discovered. <i>Gallagher v. Salem</i> , 2009 WL 2591669, at *6 (W.D. Okla. Aug. 20, 2009).

¹ Although Oklahoma does not recognize a cause of action for aiding and abetting fraud, fraud-based claims are subject to a two-year limitations period.

Appendix A:

Statutes of Limitations for Claims Against Mr. Mozilo

***National Integrity Life Insurance Co. v. Countrywide Financial Corp.,
No. 11-cv-09889 MRP (MANx) (C.D. Cal. Nov. 9, 2011)***

Claim	Limitations Period	Trigger of Limitations Period
Section 20(a) of the Securities Exchange Act of 1934	Two years. 28 U.S.C. § 1658(b)(1).	When the plaintiff discovers or reasonably could have discovered the facts constituting the violation. <i>Merck & Co. v. Reynolds</i> , 130 S. Ct. 1784, 1796 (2010).
Ohio Securities Act	Two years. Ohio Rev. Code § 1707.43(B).	When the plaintiff “knew, or had reason to know” of the facts underlying its claims. Ohio Rev. Code § 1707.43(B).
Civil Conspiracy	Two years (based on the statute of limitations for the underlying federal, state, and common-law securities fraud claims). <i>Ford Motor Credit Co. v. Jones</i> , 2009 WL 1912626, at *4 (Ohio Ct. App. July 2, 2009).	When the plaintiff discovers or reasonably could have discovered the facts constituting the violation. <i>Merck & Co. v. Reynolds</i> , 130 S. Ct. 1784, 1796 (2010). When the plaintiff “knew, or had reason to know” of the facts underlying its claims. Ohio Rev. Code § 1707.43(B).

Appendix A:

Statutes of Limitations for Claims Against Mr. Mozilo

Putnam Bank v. Countrywide Financial Corp.,
No. 11-cv-04698 MRP (MANx) (C.D. Cal. Jan. 27, 2011)

Claim	Limitations Period	Trigger of Limitations Period
Section 20(a) of the Securities Exchange Act of 1934	Two years. 28 U.S.C. § 1658(b)(1).	When the plaintiff discovers or reasonably could have discovered the facts constituting the violation. <i>Merck & Co. v. Reynolds</i> , 130 S. Ct. 1784, 1796 (2010).
Connecticut Uniform Securities Act	Two years. Conn. Gen. Stat. § 36b-29(f).	When the plaintiff discovers or should have discovered the alleged misrepresentation in the exercise of reasonable diligence. Conn. Gen. Stat. § 36b-29(f).

Appendix A:

Statutes of Limitations for Claims Against Mr. Mozilo

Sealink Funding Ltd. v. Countrywide Financial Corp.,
No. 11-cv-08898 MRP (MANx) (C.D. Cal. Sept. 29, 2011)

Claim	Limitations Period	Trigger of Limitations Period
Negligent Misrepresentation	Three years. N.Y. C.P.L.R. 214(4).	Date of the alleged misstatement. <i>Ambassador v. Euclid</i> , 1984 WL 341, at *4 n.7 (S.D.N.Y. May 24, 1984).
Aiding and Abetting Fraud ²	Three years. BGB § 195.	The end of the year in which the claim accrues, which is when plaintiff (i) gained knowledge of the circumstances and party giving rise to the claim; or (ii) would have acquired such knowledge but for its own gross negligence. BGB § 199.

² The aiding and abetting fraud claim against Mr. Mozilo in *Sealink* is time-barred for the reasons set forth in the Countrywide Defendants Memorandum, which Mr. Mozilo joins in and incorporates by reference. See Countrywide Defs' Mem. ISO Mot. to Dismiss Part VIII.B.

Appendix A:

Statutes of Limitations for Claims Against Mr. Mozilo

Western and Southern Life Insurance Co. v. Countrywide Financial Corp.,
No. 11-cv-07166 MRP (MANx) (C.D. Cal. April 27, 2011)

Claim	Limitations Period	Trigger of Limitations Period
Section 20(a) of the Securities Exchange Act of 1934	Two years. 28 U.S.C. § 1658(b)(1).	When the plaintiff discovers or reasonably could have discovered the facts constituting the violation. <i>Merck & Co. v. Reynolds</i> , 130 S. Ct. 1784, 1796 (2010).
Ohio Securities Act	Two years. Ohio Rev. Code § 1707.43(B).	When the plaintiff “knew, or had reason to know” of the facts underlying its claims. Ohio Rev. Code § 1707.43(B).
Civil Conspiracy	Two years (based on the statute of limitations for the underlying federal, state, and common-law securities fraud claims). <i>Ford Motor Credit Co. v. Jones</i> , 2009 WL 1912626, at *4 (Ohio Ct. App. July 2, 2009).	When the plaintiff discovers or reasonably could have discovered the facts constituting the violation. <i>Merck & Co. v. Reynolds</i> , 130 S. Ct. 1784, 1796 (2010). When the plaintiff “knew, or had reason to know” of the facts underlying its claims. Ohio Rev. Code § 1707.43(B).

Appendix B:

Allegations that Countrywide Abandoned Underwriting Guidelines

<u>Case</u>	<u>Examples of Abandoned Underwriting Allegations</u>
<i>American Fidelity</i>	<p>Countrywide “systematically [] ignore[d] the underwriting standards it touted.” Am. Compl. ¶ 2.</p> <p>“In order to meet is volume and market share goals, Countrywide abandoned any semblance of underwriting standards.” Am. Compl. ¶ 49.</p> <p>“As the evidence shows, Countrywide’s abandonment of its underwriting guidelines was systemic.” Am. Compl. ¶ 94.</p>
<i>National Integrity</i>	<p>“Countrywide abandoned all semblance of underwriting guidelines, regularly originating or purchasing loans issued to borrowers regardless of ability to repay or collateral value.” Compl. ¶ 10.</p> <p>Countrywide “disregard[ed] [] its own underwriting guidelines in favor of blindly approving nearly any kind of loan.” Compl. ¶ 65.</p> <p>Countrywide “systematically abus[ed] the ‘exceptions’ process in order to further circumvent its purported underwriting standards.” Compl. ¶ 84.</p>
<i>Putnam</i>	<p>Countrywide failed to disclose that it “systematically disregard[ed] the mortgage loan underwriting guidelines that [were] stated in the Certificates’ Offering Documents.” Compl. ¶ 5.</p> <p>“[I]n order to meet its volume and market share goals, Countrywide’s underwriting practices abandoned any semblance of the standards set forth in the Offering Documents.” Compl. ¶ 53.</p> <p>“The systematic abandonment of any underwriting standards rendered . . . [the] representations [in the Offering Documents] false or misleading at the time they were made. Countrywide systematically abandoned its underwriting standards to increase loan volumes without regard to loan quality.” Compl. ¶ 59.</p>

Appendix B:
Allegations that Countrywide Abandoned Underwriting Guidelines

<u>Case</u>	<u>Examples of Abandoned Underwriting Allegations</u>
<i>Sealink</i>	<p>“Countrywide ‘developed a systematic pattern and practice of abandoning its own guidelines for loan origination and underwriting’” Compl. ¶ 82.</p> <p>“Attorneys General from various states have investigated Countrywide’s lending practices and charged that Countrywide systematically departed from the underwriting standards it professed to use for originating residential loans, including those loans originated by Countrywide Home.” Compl. ¶ 84.</p>
<i>Western & Southern</i>	<p>“Countrywide abandoned all semblance of underwriting guidelines, regularly originating or purchasing loans issued to borrowers regardless of ability to repay or collateral value.” Am. Compl. ¶ 10.</p> <p>Countrywide “disregard[ed] [] its own underwriting guidelines in favor of blindly approving nearly any kind of loan.” Am. Compl. ¶ 65.</p> <p>Countrywide “systematically abus[ed] the ‘exceptions’ process in order to further circumvent its purported underwriting standards.” Am. Compl. ¶ 84.</p>